for the space of two years, the deed further providing that if any creditor should bring suit, &c., in violation of the agreement, the said White should be wholly discharged as to all claims held by the creditor or creditors so suing. Dingley, a creditor, who had signed the agreement, sued the plaintiff before the two years had expired, and in default of bail he was committed to prison. It was held that he was not entitled to an action in addition to the discharge from the debt which he owed; that the forfeiture of the debt was in the nature of liquidated damages. It is true that the chief justice, in concluding his opinion, remarked: "No action by the common law lies for damages sustained by suing a civil action when the plaintiff fails, unless it be alleged and shown to be malicious and without probable cause." But as the case which he was deciding grew out of both a suit and an arrest, it cannot be presumed that he was referring to an action in which but one of these was present. In *Cox* v. *Taylor* the plaintiff had sued out an injunction under which the plaintiff had been kept out of the use of his land for upwards of twelve years; and in *Jamison* v. *McIntosh*, also, the complaint was the wrongful suing out of an injunction.

JOHN D. LAWSON.

St. Louis.

(*To be continued.*)

RECENT AMERICAN DECISIONS.

Supreme Court of the United States.

CHARLES I. BONAPARTE, EXECUTOR OF ELIZABETH PATTERSON, PLAINTIFF IN ERROR, *v.* THE APPEAL TAX COURT OF BALTIMORE CITY, DEFENDANT IN ERROR.

The registered public debt of one state, or of a city, town or county in such state, though exempted from taxation under the laws of said state, or actually taxed in such state, are taxable by another state, when actually owned by a resident of the latter state.

IN error to the Court of Appeals of Maryland.

The following registered evidences of debt, belonging to the testatrix of the plaintiff in error, were valued to her in 1876, in her lifetime, in the city of Baltimore, where she resided, under the laws of Maryland: $105,000 City of New York 6 per cent. stock; $15,000 City of New York 7 per cent. stock; $10,000 County of

New York 7 per cent. stock; $50,000 State of Pennsylvania 6 per cent. stock, which was exempted from taxation by the law authorizing its issue; $116,000 City of Philadelphia 6 per cent. stock, part of which was exempted from all taxes under the laws of Pennsylvania; and $86,000 state of Ohio 6 per cent. stock. The interest on most of these evidences of debt was payable in the respective states under whose laws the debts were credited; and the securities were transferable only in person, or by power of attorney, at appointed places in the respective states in which the evidences of debt were issued.

The testatrix of the plaintiff in error filed her petition in Baltimore City Court, praying that these securities might be stricken from the list of her taxable properties on the ground that being bonds of other states and of cities in other states, they were not properties within the taxing jurisdiction of Maryland, under the ruling of the Supreme Court in the *Foreign Held Bond Case*, 15 Wall. 324. A *pro forma* judgment having been entered in her favor, the Appeal Tax Court of Baltimore City appealed. The Court of Appeals of Maryland reversed the *pro forma* judgment of Baltimore City Court, and decided (50 Md. 534), that these properties were rightfully valued to the testatrix of the plaintiff in error in the city of Baltimore, her place of residence, and were there taxable. She took the case by writ of error to the Supreme Court of the United States.

The opinion of that court was delivered by

WAITE, C. J.—The question we are asked to decide in this case is whether the registered public debt of one state, exempt from taxation by the debtor state, or actually taxed there, is taxable by another state when owned by a resident of the latter state. We know of no provision of the Constitution of the United States which prohibits such taxation. It is conceded that no obligation of the contract of the debtor state is impaired. The only agreement as to taxation was that the debt should not be taxed by the state which created it.

It is insisted, however, that the immunity asked for arises from art. 4, sect. 1, of the Constitution, which provides that full faith and credit shall be given in each state to the public acts of every other state. We are unable to give such an effect to this provision. No state can legislate except with reference to its own jurisdiction. One state cannot exempt property from taxation in another. Each

state is independent of all the others in this particular. We are referred to no statute of the debtor state which attempts to separate the *situs* of the debt from the person of the owner, even if that is within the scope of the legislative power of the state. The debt was registered, but that did not prevent it from following the person of its owner. The debt still remained a chose in action, with all the incidents which pertain to that species of property. It was "movable" like other debts and had none of the attributes of "immovability." The owner may be compelled to go to the debtor state to get what is owing to him, but that does not affect his citizenship or his domicile. The debtor state is in no respect his sovereign, neither has it any of the attributes of sovereignty as to the debt it owes, except such as belong to it as a debtor. All the obligations which rest on the holder of the debt as a resident of the state in which he dwells still remain, and as a member of society he must contribute his just share towards supporting the government whose protection he claims and to whose control he has submitted himself.

It is true, if a state could protect its securities from taxation everywhere, it might succeed in borrowing money at reduced interest; but inasmuch as it cannot secure such exemption outside of its own jurisdiction, it is compelled to go into the market as a borrower, subject to the same disabilities in this particular as individuals. While the Constitution of the United States might have been so framed as to afford relief against such a disability, it has not been, and the states are left free to extend the comity which is sought, or not, as they please.

Taxation of the debt within the debtor state does not change the legal *situs* of the debt for any other purpose than that of the tax which is imposed. Neither does exemption from taxation.

The judgment is affirmed.

There never was any doubt that immovable properties in a state, or properties permanently located in a state, were subject to the *lex rei sitæ*, and were, therefore, taxable by such state: 2 Domat's Civil Law by Strahan, 2d ed., p. 330, sect. 7; *Freke* v. *Lord Carbery*, 16 Eq. Cases 466, 467. "Movables, devoted to a purpose which binds them as fixtures in a particular place," are not exceptions to this rule: Savigny on Conf. of Laws, by Guthrie, 2d ed., London, 1880, p. 180; for such properties form parts of the proper wealth of the state in which they are fixtures, and are subject to the *lex rei sitæ*: *Green* v. *Van Buskirk*, 7 Wall. 150. But it may certainly be insisted that, in the United States and in England, it is a settled rule of public law, that all *movable* properties belonging to a resident of a state, which are not so located in another state as to form part of its proper wealth, have no other *situs*

than the domicile of their owner: *Tappan* v. *Merchants' Nat. Bank*, 19 Wall. 499; *Hoyt* v. *Sprague*, 103 U. S. 630, 631; *Sill* v. *Worswick*, 1 H. Bl. 690; *In re Ewin*, 1 Cr. & J. 155: *Birtwhistle* v. *Vardill*, 2 Cl. & F. 575; *Thomson* v. *Adv. General*, 12 Id. 17, 20; *In re Cigala Settlement*, L. R., 7 Ch. Div. 356, 357; Story on Conf. of Laws, 7th ed., sects. 379–381; 3 Burge on Col. and For. Law 749–751; 4 Phill. on International Law 37: Savigny admits that this is the American, English and French doctrine: Savigny on Conf. of Laws, by Guthrie, London, 1880, 2d ed. 138.

The debts due by a private corporation, created in one state to a citizen of another state, are the property of the person to whom they are due: 1 Bell's Comm., 6th ed., 510. Such debts can have no *situs* separate from the domicile of the creditor: Story on Conf. of Laws, 7th ed., sects. 362, 362 a, 399; *Thompson* v. *Adv. General*, 12 Cl. & F. 17. They can be taxed in his hands only: *Railroad Co.* v. *Jackson*, 7 Wall. 267; *State Tax on Foreign Held Bonds*, 15 Id. 320; *Murray* v. *Charleston*, 96 U. S. 445; *Kirtland* v. *Hotchkiss*, 100 Id. 498, 499. The *situs* of such debts is not separated from the domicile of their owner by any form of security, applicable to such debts, which may have been given to the creditor or created for his benefit: *Kirtland* v. *Hotchkiss*, 100 U. S. 491, 492; nor by the fact that such debts are made payable in the state in which the obligations were created, and not at the domicile of the creditor: *Kirtland* v. *Hotchkiss*, *supra*; nor by any obligation which may exist to make formal transfer of them in a particular manner, or at a particular place; or by the fact that the registry of such assignments is required to be made or kept in a particular place: *United States* v. *Cutts*, 1 Sumn. 143–149; *Black* v. *Zacharie*, 3 How. 513; *Dewing* v. *Perdicaries*, 96 U. S. 196; *Johnston* v. *Laflin*, 103 Id. 804; *Baltimore City Pass. Ry. Co.* v. *Sewell*, 35 Md. 238; Angell & Ames on Corp., 8th ed., sect. 354; *Thomson* v. *Adv. General*, 12 Cl. & F. 17; *In re Cigalla's Settlement*, L. R., 7 Ch. Div. 356, 357.

The debts due by states, counties and cities are not exceptions to the rule applicable to debts due by private corporations. When states have created debts for constitutional purposes, and contracted to repay them with interest, or when municipal organizations, acting under sufficient authority, have created debts for such purposes, and have contracted to repay them with interest, they have not exercised any sovereign powers: *U. S. Bank* v. *Planters' Bank*, 9 Wheat. 907: *Murray* v. *Charleston*, 96 U. S. 445. They have exercised the ordinary corporate power of borrowing money, in the open market, upon terms agreed upon between them and those who loaned such money. The obligations which they have given for the payment of the interest and principal of the debts thus created to any lender resident in the state or municipality which has borrowed such money, are properties in the hands of such resident, which the particular state or municipality may tax as part of his wealth: *Murray* v. *Charleston*, *supra*; *In re Cigala's Settlement*, L. R., 7 Ch. Div. 357. Such state or municipality cannot provide by legislation for collecting any tax, which it may impose on such property, by withholding from the creditor part of the interest or principal which it had stipulated to pay him; because such legislation or method of collection would impair the obligation of its contract, which was to pay to the creditor the interest and principal *in solido*: *Murray* v. *Charleston*, *supra*. But it may, while leaving the obligation of its contract wholly untouched, direct that the property which it has thus created should be valued by some sufficient standard, as the property of any holder residing in

the state or municipality creating the debt, and may subject it, in common with other similar property owned by residents of such state or municipality, to such taxes as it may be authorized to impose for the support of its government. A state or municipality can exercise this power in such case, because a debt due to a person living within its boundaries, follows the person of the creditor, and such creditor is a resident within its territorial limits: *Railroad Co.* v. *Jackson*, 7 Wall. 267; *State Tax on Foreign Held Bonds*, 15 Id. 320; *Murray* v. *Charleston*, 96 U. S. 445; *Kirtland* v. *Hotchkiss*, 100 Id. 498, 499; *Hoyt* v. *Sprague*, 103 Id. 630; *In re Ewin*, 1 Cr. & J. 155; *Thomson* v. *Adv. General*, 12 Cl. & F. 17, 20; *In re Cigala's Settlement*, L. R., 7 Ch. Div. 357; 1 Jarman on Wills (Randolph & Talcott) 4. But, if the creditor is not a resident of the state or municipal corporation, exercising the taxing power, then such state or municipality cannot direct such property to be valued to the creditor or subject it to taxation; because the particular property follows the person of the creditor, and such creditor is not subject to the jurisdiction of the indebted state or municipality. See cases last cited.

Where then can such property, so owned, be taxed?

"For all national purposes, embraced by the Federal Constitution, the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws. In other respects, the states are necessarily foreign to and independent of each other:" *Buckner* v. *Finley & Van Lear*, 2 Pet. 590; *Dickins* v. *Beal*, 10 Id. 579; *Bank of United States* v. *Daniel*, 12 Id. 53; and may tax all persons within their respective jurisdictions, and all property belonging to such persons within such respective jurisdictions, which is not expressly or by necessary implication, withdrawn from their taxing power by the Constitution of the United States: *Tappan* v. *Merch. Nat. Bank*, 19 Wall. 499; *City of New York* v. *Miln*, 11 Pet. 138; *Transportation Co.* v. *Wheeling*, 99 U. S. 279, 281, 282; *Hoyt* v. *Sprague*, 103 Id. 630. The states, though foreign and independent of each other in the administration of their domestic affairs, have been brought into the closest possible connection by that provision of the Federal Constitution, which declares that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states: Const. U. S., art. 4, sect. 2. Whatever may be the precise scope of this provision (*McCready* v. *Virginia*, 94 U. S. 395), it cannot be doubted that it confers upon every citizen of each state the right to acquire property in every other state, and imposes on him the obligation to hold such property, if it remains permanently within the jurisdiction of the state, in which it was acquired, subject to the taxing jurisdiction of such state; but if it does not remain within such jurisdiction, but follows the person of its owner, to hold it subject to the taxing jurisdiction of the state of which he is a citizen. If, therefore, the creditor of a particular state or municipal organization, who does not reside within the territory of the indebted community, cannot be taxed by it, because the debt due to him, which he had the constitutional right to acquire, is property, which follows his person, and he is a resident of another state, surely the state of which he is a resident can direct that such property, so owned, shall be valued to him, and be taxed as a part of his wealth in the state of which he is a resident. If the state of which such person is a resident cannot tax such property as a portion of his wealth, no other state can tax it. The owner of such property is not within the jurisdiction of any other state, and the property which he owns has no *situs*

in any other state. It would follow, therefore, that if the state in which the holders of the obligations of other states and of municipalities in other states reside, cannot tax such properties, they are, in effect, exempted from taxation, except when they are held by a resident of the state by whose laws the issue of such obligations was authorized. Such a conclusion certainly could not be properly sanctioned. It serves no purpose to say that the imposition of such a tax upon the bonds of other states, owned by residents of the taxing state, impairs the borrowing powers of the states which issued the obligations in such taxing state. To this it would be sufficient to reply, that the right of any state to create a movable property, exempted from taxation, even when it formed part of the wealth of other states, would yet more seriously impair the taxing powers of other states. A state which taxes the bonds of other states or of municipalities, created by other states, when such bonds are owned by a resident of the taxing state, impairs no power which the indebted states or municipalities may exercise within their respective territorial limits. It exercises only the undeniable and unlimited jurisdiction which it possesses over all persons and things within its own territorial limits in a case in which such jurisdiction has not been abridged by the Constitution of the United States: *City of New York* v. *Milne*, *supra*; *Transportation Co.* v. *Wheeling*, 99 U. S. 281, 283; Const. U. S., 10th Amendment. Every state has a right to repair, as far as it can, the loss of taxable wealth, caused by the withdrawal from its own territories of capital belonging to a resident, by the taxation of the property which such resident has brought within its limits in exchange for the capital with which he has parted. If any possible loss occurs to an indebted state because of the exercise of the taxing power of another state over its bonds, when the property of a resident of the taxing state, it is certainly *damnum absque injuria*. It is the exercise of a right by the taxing state, which causes no more detriment than is necessarily the result of an artificial form of government and of conflicting public interests: Cooley on Torts 81; Weeks on Dam. Abs. Inj. 16; Sedgwick on Meas. of Dam., 6th ed., 28; *Potter* v. *Brown*, 5 East 131. Bonds issued by the United States have their *situs* at the residence of their owner, but they are, of course, excepted from the taxing power of any state. Although the government of the United States is possessed of limited powers, it has supreme authority so far as its sovereignty extends: *Tennessee* v. *Davis*, 100 U. S. 263; *Rhode Island* v. *Massachusetts*, 12 Pet. 729. No state can interfere with the operation of these powers, or impose the smallest restraint upon their use: *Transportation Co.* v. *Wheeling*, *supra*; *Tennessee* v. *Davis*, *supra*. The United States is empowered by the federal Constitution to borrow money for the prescribed uses of the government, and may issue its bonds as evidences of its indebtedness, showing the terms upon which the particular debts were contracted. As the federal government is supreme in the powers which it possesses, it is not, of course, subject, in any particular, to the powers of state governments. A state, therefore, cannot tax the money which the federal government has borrowed, and for which it has given its bonds, though such borrowed money may actually remain within its territorial jurisdiction, because it is the property of the federal government. It cannot tax the instruments which evidence the debts thus created and promise their repayment, although these belong to residents of such state, because such instruments were executed by an authority above its own, whose contracts it cannot subject to its taxing power, even though such contracts are in themselves pro-

perty. It cannot tax the credits evidenced by such contracts as separate properties, because until the contracts are terminated by the payment of the money due under them, the credits are inseparable from the instruments which secure them. In a word, it cannot tax these bonds, because they are operations of a government superior to itself, over which it cannot exercise jurisdiction or control in any form: *McCulloch* v. *Maryland*, 4 Wheat. 405, 429, 432, 435; *Weston* v. *City of Charleston*, 2 Pet. 466, 469; *Tennessee* v. *Davis*, *supra*. None of these reasons apply to the taxation by states of the obligations of other states, or of municipalities in other states, belonging to residents of the taxing states, because "the power in the states to tax for the support of the state authority reaches all the property within the state which is not properly regarded as the instrument or means of the federal government: *Transportation Co.* v. *Wheeling*, *supra*.

These considerations induced the belief that the Supreme Court would not adhere to its *dictum* in *The Foreign Held Bond Case*, 15 Wall. 324, that the taxable *situs* of state and municipal securities, was the *situs* of the respective debtor communities. It departed, indeed, from that *dictum* when in *Murray* v. *Charleston*, 96 U. S. 445, it limited the exercise of the taxing power of the states to such portions of their debts, as were owned by creditors living within the jurisdiction of the taxing states.

The theory that the locality of indebted states and cities fixed the *situs*, as *property*, of the evidence of debt which they issued, seems to rest upon a *dictum* of Lord MANSFIELD in *Robinson* v. *Bland*, 2 Burr. 1079; s. c., 1 W. Black. 246, cited in Story on Confl. of Laws, 7th ed., sect. 383. This was an action on a bill of exchange, given for money lost at play in Paris. The bill was drawn by the loser, when in Paris, on himself in England in favor of the winner of the money. Lord MANSFIELD, in the course of his opinion, said, by way of illustration: "In every disposition or contract, where the subject-matter relates locally to England, the law of England must govern, and must have been intended to govern. Thus, a conveyance or title of land, a mortgage, a contract concerning stocks, must all be sued upon in England; and the local nature of the thing requires them to be carried into execution according to the law here." In the case, as reported in 1 W. Black. 246, the words used by Lord MANSFIELD are stated to have been, "so stock jobbing contracts and the statutes thereupon have reference to our local funds." That opinion was delivered in 1760. So far as it relates to the funded debt of England, its language must be interpreted with strict reference to the nature of that funded debt, as it existed when the opinion was rendered. The funded debt of England, at that time, was made up of debts contracted by the government at different periods, evidenced by annuities charged upon particular branches of the public revenue for a period of time, or in perpetuity: Smith's Wealth of Nations, book 5, c. 3: 1 Bell's Comm. 6th ed. 523; McCulloch on Taxation and Funding 455; Williams on Pers. Prop., 4th Am. ed. 200. It is perfectly true that such annuities, when they were first created, were considered in England to be real property, descendible to the heir: *In re Ewin*, 1 Cr. & J. 155. Lord HARDWICKE, as late as 1750, considered them, apparently, as personal inheritances, which the law suffered to descend to the heir: *Stafford* v. *Buckley*, 2 Ves., Sr., Belt's ed. 178, 179. In Scotland they were regarded *quasi feuda*, because, by their yearly produce, they bore some resemblance to permanent rights: 2 Bell's Comm., 6th ed. 717; 1 Ersk. Law of Scot., 1871, 285. The inclination to treat such annuities as realty was naturally strong in Scot-

land, because there, by ancient law, all personal obligations, bearing interest until their maturity, were considered heritable: 1 Ersk. Law of Scot., 286, 287. It is possible that the Scotch rule and the opinion of Lord HARDWICKE in *Stafford* v. *Buckley*, above referred to, suggested the illustration which Lord MANSFIELD used. However that may be, it is quite certain that later authorities lead to conclusions very different from those which have been, more than once, drawn from what was said by Lord MANSFIELD in the case of *Robinson* v. *Bland*, already cited. Under the Legacy Duty Act of 36 Geo. 3, c. 52, the duty was made chargeable upon the legacy: Flood on Wills of Pers. Prop. 608. Unless the fund, constituting the legacy, was in Great Britain, the duty did not attach: *In re Ewin*, 1 Cr. & J. 151; *Thomson* v. *Adv. General*, 12 Cl. & F. 17. The *situs* of the fund was always the material inquiry. The domicile of the person bequeathing the legacy established the *situs* of the legacy for purposes of taxation: *Attorney-General* v. *Forbes*, 2 Cl. & F. 48; *Thomson* v. *Adv. General*, 12 Id. 17; *Arnold* v. *Arnold*, 2 Myl. & Cr. 256; *Wallace* v. *Attorney-General*, 1 Ch. App. Cas. 4; *Attorney-General* v. *Napier*, 6 Exch. (Wels., H. & G.) 219–222. In the leading case of *In re Ewin*, 1 Cr. & J. 151, the testator, who was domiciled in England, died possessed of considerable property in the American, Austrian, French and Russian funds, which funds were transferable and the dividends payable in those respective countries only. The executor was called on to give an account of the legacies and property of the testator, and to pay the legacy duties. *Brougham*, of counsel, contended that the property was in the nature of real property; and that it was, at all events, local property, being payable and transferable only in the countries in which the funds were. BAYLEY, B., in delivering his opinion, pp. 153–155, said, that the will operated upon that which "throughout, in my opinion, is English personal property. It was pressed by the counsel that this property was to be considered as being in the country in which it was real property. There is nothing in any part of the affidavits to show that such was the character that properly belonged to it; but some reliance was placed upon analogy between the case of this property and property in the English funds, which, in the creation of those funds, might originally be considered as being real property and descendible to the heir, but which, very soon afterwards, was considered to be personal property, and not descendible to the heir, but to go as personal property would go. Does it follow, because the English funds were originally considered as real property, that the French and American and Russian funds were also so considered?" * * * "If it is not real estate, it is personal estate; and if it is personal estate, is it in any respect to be considered different from personal property abiding in this country? There is no doubt but that the amount, when you are receiving the dividends, will be payable in the place in which, by the constitution of these funds, the dividends are payable; and that will be America, Paris or St. Petersburg. But you are not to look at the place where the thing is payable or transferable; but when once you have ascertained that it is personal estate, then you are to ascertain what are the rules of law with regard to personal estate; that personal estate being at the time not locally in this kingdom, but being at the time locally situated abroad." It was thereupon (page 156), concluded that the foreign funds, which were the subject of the controversy, were, in fact, English personal property, upon which legacy duties were chargeable. The case *In re Ewin* was pointedly referred to and approved in the case of *Thomson* v. *Adv. General*, 12 Cl. & F.

17, 20, 22, 24, 25, 26, Lord BROUGHAM concurring in the opinion (p. 24). Under the Succession Duty Act of 16 & 17 Vict., c. 51, sect. 42, the duty imposed was a first charge on the interest of the successor in all the real and personal property, in respect whereof such duty was assessed, while it remained in the ownership, or control of the successor. The act applies to the whole United Kingdom, but not to any country beyond those realms: *Wallace* v. *Attorney-General*, L. R., 1 Ch. Ap. 7 (1865). *In re Cigala's Settlement Trusts*, L. R., 7 Ch. Div. 351, the latest case bearing upon the question, the facts were these. An English woman, owning English funds, French *rentes* and shares in the Bank of France, and being about to marry an Italian, assigned these properties to four trustees, three of whom were Englishmen, upon trusts, after the death of the survivor of the husband and wife, for the children of the marriage. When the controversy arose, all the trustees were Englishmen. Both parents died leaving children, who were domiciled Italian subjects. The question was, whether the property in question was liable to the English succession tax. The fixed locality of the French *rentes* was relied on by counsel (p. 354). But it was held by JESSEL, M. R. (pp. 355, 356, 357), that the properties in question were movable properties; that the ownership of the properties being in persons subject to British jurisdiction, and the forum for deciding upon the claims of the children being a British court, and the properties being, in fact, English property, the crown was entitled to the succession tax.

It is proper to note, at this point, that the cases of *Attorney-General* v. *Cockerell*, 1 Price 165, and *Attorney-General* v. *Beatson*, 7 Id. 560, which have some relation to the questions involved in this case, were overruled by *Attorney-General* v. *Forbes*, 2 Cl. & F. 80; *Arnold* v. *Arnold*, 2 Myl. & Cr. 272; *In re Coales*, 7 M. & W. 394, and by *Thomson* v. *Advocate-General*, 12 Cl. & F. 23.

The reasoning of Mr. Wharton (Conflict of Laws, sects. 297–311), and the rule laid down by him, sect. 311, is supposed to be at variance with the authorities which I have cited, and with the conclusions drawn from them.

Mr. Wharton says, sect. 311, that the rule of international law may be thus stated: "Movables, when not massed for the purposes of succession or marriage transfer, and when not in transit, or following the owner's person, are governed by the *lex situs*, except so far as the parties interested may select some other law." Phillimore, alluding to the very rule stated by Wharton, says, that, whatever may be the merits of the doctrine, the time for adopting it can hardly be said to have yet arrived: 4 Phill. on Internat. Law 37; Story on Conflict of Laws, 7th ed., sects. 379–381. No rule is of value, which fails to supply the means of ascertaining with precision, the subject-matter to which it is applicable. Mr. Wharton excepts from the operation of the *lex rei sitæ* goods which follow the person of the owner, without incorporating in his rule any method of determining what movables have this quality, and what movables must be considered as devoted to a purpose, which binds them as fixtures to a particular place: Savigny on Conflict of Laws by Guthrie, London, 1880, p. 180. So much of his rule as is applicable to the matter in controversy, amounts to no more than this: "Movables * * * when they do not follow the owner's person, are governed by the *lex situs*." There certainly can be no question that this is true, but it does not give any help in reaching a conclusion in this case. As the author bases his reasoning to a large extent on the text of Savigny, it would seem that he ought to have expressed in his rule, the limitation which Savigny engrafted on the theory which he adopted: Savigny on Conflict of Laws

by Guthrie, ed. 1880, p. 180. He ought to have done more than this. The cases cited show that movable properties are not only massed for purposes of succession at the domicile of the person upon whom said properties legally devolve, but also for purposes of taxation: *In re Ewin*, 1 Cr. & J. 155; *In re Cigala Settlement Trusts*, L. R., 7 Chan. Div. 357, and other cases already cited. If these considerations had been kept in mind, the rule would have read as follows: Movables when devoted to a purpose which binds them as fixtures to a place, and when not massed for the purposes of succession, or marriage transfer or taxation, and when not in transit, are governed by the *lex rei sitæ*. Other movables are governed by the *lex domicilii*, except so far as the parties interested may be competent to select and have selected some other law.

It may, some day, be decided that the debts of states, forming parts of our Federal Union, and of municipal organizations in such states, have, by the law of nations, their *situs* within the territory of the government of which, in the view of that universal law, those states and municipal organizations form parts. It can scarcely be imagined that a narrower doctrine will ever prevail.

In view of the decisions of the Supreme Court which have been adverted to, and of the relations of the states of our Union to each other, it is impossible to accept the theory of Mr. Wharton that public loans, and railway and other securities, are subject only to the *lex rei sitæ*, as the correct statement of the rules of international law applicable to such cases in the United States. The argument upon which he mainly relies, would not support such application of his theory. The fullest recognition of the application of the rule, *mobilia sequuntur personam*, to the securities of states and municipalities in states, in this country, would not create any danger that creditors, citizens of other states, in the same Union, might exercise undue political influence in the affairs of an indebted state: Wharton on Conflict of Laws, sect. 305. It is impossible to frame a theory, which would show that increase of danger to any state would result from holding that a debt due by it, belonging to a resident of another state, was property in such other state. Nor is the principle insisted upon modified when evidences of debt, issued by a state or municipality, are registered by the debtor community in the name of the holders of such debts, and are required to be transferred, upon a prescribed registry, in the manner directed by local laws. Such debts, when so registered, would not in any way differ in their character of property from unregistered evidences of like indebtedness, which were transferable by simple endorsement, nor, indeed, from similar evidences of debts payable to the bearers, or holders of such evidences of debt: *In re Ewin*, 1 Cr. & J. 151. Conditions, regulating the mode of transfer of such securities, existed in reference to the bonds of the city of Charleston: *Murray* v. *Charleston*, 96 U. S. 440; but they did not hinder the court from deciding that such bonds had no taxable *situs* within the municipal jurisdiction of Charleston if their owner was a non-resident of the state. The ruling of the Supreme Court in *Johnston* v. *Laflin*, 103 U. S. 804, equally shows that local conditions, regulating transfers of incorporeal property, create no *situs* for such property.

There is no reason why a debt due by a state to a citizen of another state, and which is, therefore, the property of a citizen in such other state, should be considered as property having its only legal situs within the territory of the indebted state. If any such rule is applicable to the debts of states, it is equally applicable to the debts of cities and counties in any state. It cannot be supposed, that, in the absence of any legislation affecting the question, any court

would hold that the debt due by a city, or county, to a resident of another city, or county, in the same state, was property which had become blended with the general mass of property in the indebted city, or county, when the creditor did not live in such indebted city, or county? And yet, if the reasoning of Wharton is well founded, this would be the necessary conclusion.

The argument in favor of the taxing power of a state, over such securities, is summed up in a portion of the first maxim set forth in Story on Confl. of Laws, sects. 18, 23, cited and adopted by the Supreme Court in *Hoyt* v. *Sprague*, 103 U. S. 630. "Every nation possesses an exclusive sovereignty and jurisdiction within its own territory. * * * * The direct consequence of this rule is, that the laws of every state affect and bind directly all property, whether real or personal, within its territory, and all persons who are residents within it whether natural born subjects or aliens."

The argument against the existence of a taxing power in debtor states, and debtor municipal organizations in such states, over such securities, when owned by a non-resident, is summed up in the second and third maxims of the same author, also cited and adopted by this court in 103 U. S. 630, 631. These maxims, considered together, assert that no state, or nation, can, by its laws, directly affect, or bind property out of its own territory, or persons not resident therein, unless the laws of the country, in which such property is situated, or in which such persons reside, sanction the exercise of such extra-territorial power. These last maxims are stated, in another form, in Story on Confl. of Laws, 7th ed., sect. 388. "The municipal laws of a country have no force beyond its territorial limits; and when another government permits them to be carried into effect within her jurisdiction, it does so upon a principle of comity."

It may be true that a general usage, in relation to the *situs* of state and municipal bonds and evidences of debt, might, if it existed in the United States, create a different rule from that sought to be maintained upon the basis of prevailing authorities, but no such general usage exists in this country. This is conclusively proved by the references subjoined to the provisions of the Codes, Revised Statutes, or collections of the General Statutes of states, whose legislation exists in a form permitting convenient examination. In the following states, as will appear by the references appended, the bonds, or stocks of other states, and of cities and counties in other states, owned by residents of the respective states, are, either by express designation, or under the broader but equally definite name of public securities, required to be valued to the owner thereof in the state in which he resides. Arkansas: Digest of Stat., 1874, ch. 116, sect. 5047, p. 885. Delaware: Revised Code of 1852, as amended in 1874, pp. 53, 54, vol. 14 Laws, ch. 22. Georgia: Code of 1873, sect. 801, p. 142. Indiana: Stats. 1876, vol. 1, ch. 22, sect. 3, p. 73. Iowa: Rev. Code, 1880, sect. 801, p. 192. Kansas: Stats. 1876, vol. 2, sect. 2, pp. 1006, 1009. Maine: Rev. Stats. 1871, tit. 1, ch. 6, sect. 5, p. 129. Maryland: 1 Code, art. 81, sect. 2 (1874), ch. 483, sect. 2 (1876), ch. 260 (1878), ch. 413 (1880), ch. 122. Massachusetts: Gen. Stats. 1860, ch. 11, sect. 4, p. 74. Michigan: Compiled Laws, 1871, vol. 1, ch. 21, sect. 3, pp. 359, 360. Minnesota: Gen. Stats. 1878, ch. 11, sect. 1, p. 211. Mississippi: 1880, ch. 10, sect. 468, p. 151, sect. 474, p. 153. Missouri: Rev. Stats. 1879, vol. 2, ch. 145, sect. 6664, p. 1306. Nebraska: Gen. Stats. 1873, ch. 66, sect. 2, p. 897. New Hampshire, General Laws, 1878, tit. 8, ch. 53, sect. 6, p. 139. New York: Saxton's Tax Laws, 1880, p. 31, Rev. Stat., 6th ed., p. 932. North

Carolina: Battle's Revisal, 1873, ch. 102, sect. 9, sub-sect. 5, p. 760. New Jersey: Revision, 1877, p. 1151, par. 63. Ohio: Rev. Stats. 1880, vol 1, tit. 13, ch. 1, sect. 2730, p. 706. Oregon: Gen. Laws, 1843—1872, ch. 57, tit. 1, sect. 1, p. 748. Pennsylvania: 2 Brightly's Purd. Dig., 1872, p. 1386, sect. 170. Rhode Island: Gen. Stats. 1872, tit. 8, ch. 39, sect. 10, p. 104. Tennessee: Acts of 1879, ch. 221, p. 264. Texas: Rev. Stats. 1879, tit. 95, ch. 2, art. 4671, p. 679. Vermont: Gen. Stats. 1862, tit. 26, ch. 83, sect. 4, p. 516. West Virginia: Rev. Stats. 1879, ch. 186, sect, 47, p. 1071. Virginia: Code, 1873, tit. 12, ch. 33, sect. 49. In the following states such properties are certainly taxable, when so owned, under the general language of the taxing laws of such states. Alabama: Code, 1876, tit. 7, art. 3, sect. 362, p. 258. Connecticut: Revision of 1875, tit. 12, ch. 1, sect. 14, p. 156. Illinois: Rev. Stat. 1880, ch. 120, sect. 1, p. 868. Wisconsin: 1878, tit. 13, ch. 48, sect. 1034, p. 339.

The usage, which would enable an indebted state to hold out to citizens of other states, who might purchase its securities, immunity of the property thus acquired from taxation by the states of which they were citizens, would be fraught with injury to such other states. If the rule, *mobilia sequuntur personam*, can be regarded only as a fiction of law, it is certainly necessary for the purposes of justice, in matters of taxation, that the fiction should be maintained, in order that the vast and widely diffused sum of wealth represented by the debts of states, counties, townships, school districts, cities and municipalities, should be taxed in the hands of its possessors by the states in which such possessors respectively reside: *Green* v. *Van Buskirk*, 7 Wall. 150.

It is immaterial whether securities, issued by another state, or by a municipality incorporated by another state, and owned by a resident of the taxing state, were or were not exempted from taxation by the state which authorized the issue of such securities. Such exemption can have no extra-territorial operation: 103 U. S. 630, 631, except by general usage, or by a comity which had attained the force of general usage. There is, of course, no need of any argument to show that securities, issued by other states, or by municipal or other corporations incorporated by other states, are not exonerated from taxation in the state which exercises this power, because such securities are not taxed in such other states, under their general laws, when owned by residents of such other states. Each state is free, in the absence of constitutional provision to the contrary, to exempt from taxation any class of property belonging to residents of such state, to which it may see proper to grant such immunity. The power thus exercised can never operate beyond the jurisdiction of the state exercising it. No state can, by its legislation, protect from taxation property within the jurisdiction of another state, owned by a resident of such other state.

C. J. M. GWINN.